Clive Stafford Smith — the Baron Münchhausen of Death Row

Founder and head honcho of Reprieve, Clive Stafford Smith, has a new book coming out on the American criminal justice system. Unsurprisingly, it is called *Injustice*. Be sure not to read it.

Clive Stafford Smith doing something intelligent for once. He is shown here at a London press conference in March 2009 campaiging against torture.

When we hear the word fanatic, most of us think of some wide-eyed individual, perhaps holding a bomb or wearing a suicide vest. At best, we think of someone who not only won't change his mind but can't change the subject. There are though, fanatics who speak, apparently, with the voice of quiet reason. An impeccably English accent helps the deception, especially when addressing an American audience.

Clive Stafford Smith is one of these latter types of fanatics. He is given three pages in the latest issue of the *New Humanist* magazine to talk about his new book and sound off at the wicked American criminal justice system, with especial reference to the death penalty. Here, as in this short presentation, he sounds very persuasive. Certainly he is charismatic, but the same was often said of Ted Bundy, a man Stafford Smith himself said was nutty as a fruitcake, because evil people don't exist. This sort of drivel is of course philosophy, and should be confined to its ivory towers. Back on planet Earth, higher and more pragmatic standards are required.

Let's though return to that (superficially) persuasive speech and take a more critical look. He begins with a claim that is both amazing and shocking in equal measure, if it is both true and in context. This is that in New Orleans over a three year period, he and a charity he had set up represented 171 people who were facing capital charges, and they were able to prove that in 126 cases, the authorities (presumably primarily the police) had arrested the wrong person.

The charity concerned was the Justice Center, which was destroyed by Hurricane Katrina in 2005. Let us though consider this claim. First, what is he actually saying, that the police arrested and charged 171 people with capital murder, and that 126 of them were later found to be innocent? That would be worrying indeed. Firstly though, innocent people are often arrested on reasonable suspicion (probable cause in the US) of complicity in all manner of crimes including murder. And then released. For example, in the ongoing case of Emma Winnall, there were two early arrests. This dreadful crime began as an inquiry into a serious assault but progressed to a murder investigation after this frail elderly lady died in hospital. The two people arrested were her carer and the carer's son.

Anyone whose fingerprints and/or DNA are found at or near a crime scene is likely to be questioned by the police – certainly if they are doing their job – and sometimes, for whatever reason, they will arrest rather than simply take statements. We don't know how many of these 126 suspects or potential suspects were arrested under broadly similar circumstances, because in his presentation, Mr Stafford Smith did not read out a list of names. All the same, 126 in three years, that is more than one every nine days. Can that be for real?

This is all the more remarkable when one considers a fact known to all police officers and most true crime buffs, namely that in the majority of murder cases, there is no dispute about the identity of the perpetrator. Most murders are if not domestic then the result of an altercation in the workplace, in a bar, or some such. Satpal Ram stabbed and killed a fellow diner in a restaurant. At the time of writing, Hannah Bonser is on trial for the murder of a schoolgirl, but the only issue to be decided is her state of mind.

Nevertheless, it would be time consuming in the extreme to document and analyse the treatment meted out by New Orleans police to all 126 persons on this list – assuming Mr Stafford Smith were to release their names – but the following 6 names of people for whom he and his organisation Reprieve have advocated are in the public domain, and there is sufficient information available for the critical reader to assess both Mr Stafford Smith's credibility and his technique. These names are, in alphabetical order:

Linda Carty
Troy Davis
Edward Johnson
Krishna Maharaj
Neil Revill
Ivan Teleguz

It is important to stress that Clive Stafford Smith and his Reprieve organisation have not simply advocated on behalf of these 6 individuals, they have proclaimed their actual innocence.

Linda Carty was the subject of a very sophisticated and even more dishonest marketing campaign in Britain. Reprieve concentrated first and foremost on trashing her lawyer, Jerry Guerinot, but they also totally misrepresented the strength of the case against her, which was in a nutshell, overwhelming.

The case of Ivan Teleguz is similar to that of Linda Carty, although unlike her he didn't dirty his hands by actually murdering the victim, instead he paid someone to carry out the crime. The common ground he has with Carty is that he is an immigrant, so the issue of consular assistance has been raised, and indeed, the guys and gals at Reprieve have made a video about this subject.

Another foreign national convicted of murder in the United States is Neil Revill; again, if you got all your information about his case from Reprieve, you might get the impression he too was a miscarriage of justice. Not so, the case against him was a lot stronger than they let on.

Troy Davis spent two decades on death row before he was executed. His innocence was proclaimed by Reprieve and trumpeted by another so-called human rights organisation that went the extra mile suborning both perjury and recantations in an ultimately vain effort to save his life. While any reasonable person may question a legal process that executes a man twenty years after he is sentenced to death, no jurist of reason who has studied the facts of this case can conclude that Troy Davis was anything but guilty of murder.

The case of Edward Johnson is of great significance for Clive Stafford Smith, because it is the one that first propelled him into the limelight many years ago. He has often proclaimed the innocence of this convicted murderer, and contributed to an amicus brief filed on Johnson's behalf. What the appellate court thought of this claim of actual innocence can be found here.

The fourth name on this list is the one that is occupying Clive Stafford Smith at the moment. He is fond of saying that capital punishment is a system that ensures those without capital get the punishment. Krishna Maharaj is an exception to this rule, a rich man on death row, at least he was on death row. In his *New Humanist* interview, Mr Stafford Smith claims the US courts have said that the innocence of his client is not relevant, and in the aforementioned speech he makes the same claim about convicted murderers in general, citing the Maharaj case.

For those who want to read the truth rather than listen to creative fantasy, the basic facts of the Maharaj case can be found here. If nothing else, the evidence against him is a lot stronger than Stafford Smith and Reprieve would have the world believe it to be.

According to Stafford Smith, in *Herrera v Collins*, (1993), it was held that the innocence of a man on death row is not relevant to whether or not he should be executed. This nonsense can be found all over the Internet, and as might be suspected, there is a lot more to the judgment than this cherry picked misquote. The full text of this ruling can be found here. Herrera was convicted of murdering two police officers, appealed his conviction more than once, and lost.

This was hardly surprising as he had pleaded guilty to murdering one of the officers, but years later he changed his mind, and tried to blame his dead brother. What did the court actually say about executing the innocent?

"...the evidence upon which petitioner's claim of innocence rests was not produced at his trial, but rather eight years later. In any system of criminal justice, *innocence or guilt* must be determined in some sort of a judicial proceeding. Petitioner's showing of innocence, and indeed his constitutional claim for relief based upon that showing, must be evaluated in the light of the previous proceedings in this case, which have stretched over a span of 10 years."

There is a lot more to this judgment, but basically Herrera was trying it on, and the court would not allow it. The rules of evidence can become extremely complicated, but it is not enough simply for a convicted murderer or convicted anyone to claim he has found new evidence that proves his innocence. For one thing, this new evidence must be both new and worthy of belief. Clearly, in this case it was neither. There has also to be some finality to the process.

There is little doubt either that in the Maharaj case and indeed in many others, Clive Stafford Smith has been trying it on, including those of *innocent* Ed Johnson and Linda Carty.

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